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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	In Proceedings Under Chapter 11
)	
BCE WEST, L.P., et al.,,	)	Case No. 98-12547 through 98-
	)	12570-PHX-CGC
Debtor.)	
	)	RESPONSE OF CAPTEC FINANCIAL
	)	GROUP INC. TO DEBTOR'S MOTION
	)	FOR ORDER AUTHORIZING REJECTION
	)	OF UNEXPIRED LEASES OF
	)	NONRESIDENTIAL REAL PROPERTY
)	
	)	Hearing
	)	Date: 10/26/98
	)	Time: 10:00 a.m.

This Response is filed by CAPTEC Financial Group, Inc. ("CAPTEC"), in the Chapter 11 bankruptcy case of BCE West, L.P. et al (the "Debtor"). CAPTEC files this Response in relation to the Debtor's "Motion For Order Authorizing Rejection of Unexpired Leases of Nonresidential Real Property" (the "Motion"). In response to the Motion, CAPTEC represents and asserts as follows:

1. On October 5, 1998, the Debtor (along with a number of affiliates) filed its Chapter 11 bankruptcy case in this Court. On or about October 7, 1998, the Debtor filed the Motion seeking to

1 reject certain non-residential real property leases. CAPTEC is a
2 lessor under certain of those leases which the Debtor seeks to
3 reject (the "CAPTEC Leases").

4 2. CAPTEC has no objection to the specific relief
5 requested in the Motion (i.e., rejection of the CAPTEC Leases and
6 other leases). If and to the extent that the Motion seeks other
7 relief, CAPTEC specifically reserves all of its rights and remedies
8 under the Bankruptcy Code, including, but not limited to, the right
9 of CAPTEC to assert the full amount of its claims for damages
10 arising from the proposed rejection of the CAPTEC Leases. In
11 addition, CAPTEC specifically objects to the amount of damages set
12 forth in the Motion and its accompanying exhibits. CAPTEC also
13 reserves its rights to assert additional claims (including
14 administrative claims) based upon any failure of the Debtor to
15 vacate the properties (the "CAPTEC Properties") subject to the
16 CAPTEC Leases in a timely and proper manner.

17 3. To avoid future controversies, to reduce litigation
18 costs, and to mitigate CAPTEC's potential claims in this case,
19 CAPTEC believes that the Court should establish conditions and
20 procedures for the orderly surrender and turnover of the CAPTEC
21 Properties. Specifically, CAPTEC requests that the Court direct the
22 Debtor to vacate the CAPTEC Properties immediately,¹ and to return

23
24 ¹ The Debtor should be required to maintain insurance on the
25 CAPTEC Properties until such time as the properties are surrendered
26 to CAPTEC. The Debtor also should be required to pay all postpetition
taxes accrued on the CAPTEC Properties as required under the CAPTEC
Leases.

1 the CAPTEC Properties in good "broom swept" condition so that
2 remarketing and releasing efforts can commence immediately.² CAPTEC
3 also requests that the Court direct the Debtor to remove all of its
4 personal property from the CAPTEC Properties in a timely manner, and
5 to leave undisturbed the fixtures contained in the CAPTEC
6 Properties.³ In this regard, CAPTEC requests that the Court direct
7 the Debtor to furnish immediately to CAPTEC a list of personal
8 property which is slated for removal from the CAPTEC Properties.

9 5. One of the properties leased to the Debtor is located
10 at 201 Tarentum Bridge Road, New Kensington, Pennsylvania (the "New
11 Kensington Property"). CAPTEC is informed and believes that the
12 Debtor has discontinued its business at the New Kensington Property.
13 The New Kensington Property was not scheduled in the Motion as a
14 CAPTEC Lease slated for rejection. CAPTEC believes this omission to
15 be an oversight, and requests that the New Kensington Property be
16 added to the list of properties that the Debtor seeks to reject (and
17 that the New Kensington Property be subject to the same turnover
18 procedures as are applied to the other CAPTEC Properties). If the
19 Debtor does not intend to reject the lease of the New Kensington

20
21 ² In this regard, the Debtor should be required to remove and
22 dispose of all foodstuffs, cleaning solvents, and related materials
that are on site at the CAPTEC Properties.

23 ³ If and to the extent that the Debtor is permitted under the
24 CAPTEC Leases to remove personal property which has been affixed or
25 anchored to the ceilings, walls, or floors of the CAPTEC Properties,
26 the Debtor also should be required to repair and clean up any damage
caused by removal of such personal property. CAPTEC also requests the
right to have a representative present during the time that the Debtor
attempts to remove any personal property which has been affixed or
anchored to the ceilings, walls, or floors of the CAPTEC Properties.

1 Property, then CAPTEC requests that Court order the Debtor to comply
2 immediately with all the requirements of Bankruptcy Code § 365
3 applicable to that particular property.

4 6. In conclusion, the relief requested in this Response
5 is fair and equitable, it comports with the Debtor's lease
6 obligations, and it is necessary to avoid potential controversies
7 between the parties while mitigating CAPTEC's claims in this case.

8 WHEREFORE, CAPTEC requests the entry of an Order granting
9 the relief requested in this Response.

10 RESPECTFULLY SUBMITTED this 20th day of October, 1998.

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14 By /s/ Scott R. Goldberg, #15280
15 John R. Clemency
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16 Attorneys for CAPTEC Financial Group,
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**U.S. Bankruptcy Court
District of Arizona (Phoenix)
Bankruptcy Petition #: 98-12547-CGC**

Assigned to: Charles G. Case II
Chapter: 11
Voluntary: v
Previous Chapter:

Date Filed: 10/05/1998
Date Converted:
Date Reopened:
Date Terminated:
Date Discharged:
Date Dismissed:

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